IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 12, 2007

JUDY JONES, ET AL. v. WAYNE COUNTY, ET AL.

Appeal from the Circuit Court for Wayne County
No. 4002 Stella Hargrove, Judge

No. M2006-01062-COA-R3-CV - Filed on July 10, 2007

Appellant fell down a staircase on Appellee's premises, sustaining injuries resulting in lost wages and accrued medical expenses. About six months before Appellant's fall, Appellee performed maintenance on the staircase, replacing screws and securing loose boards. Appellant expressed concern about the condition of the stairs to various parties prior to her fall, but never to Appellee. The trial court ruled that the staircase was not dangerous, and that Appellant was at least 50% at fault for her injuries by failing to exercise reasonable care for her own safety. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

David A. Riddick, Jackson, Tennessee, for the appellants, Judy Jones and Steve Jones.

Taylor B. Mayes, Travis B. Swearingen, Nashville, Tennessee, for the appellees, Wayne County Medical Center and Maury Regional Hospital.

OPINION

I. FACTUAL BACKGROUND

Judy Jones ("Appellant"[1]) worked as a family nurse practitioner in an office her employer leased from Wayne Medical Center[2] ("Appellee"). When entering and exiting the building, Appellee's employees used a flight of fourteen wooden steps on the back of the building leading to a wooden deck where the back door to the office was located. On August 7, 2003, Appellant was

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[1] Judy Jones' husband, Steve Jones, is also an Appellant in the cause, but will not be referred to in this opinion.

[2] Wayne Medical Center is leased by Maury Regional Hospital from Wayne County General Hospital and Wayne County, Tennessee.

leaving work when she fell on the wooden staircase leading down to the parking lot. According to Appellant, as she reached the fourth step from the top, the board at the outer edge of the step gave way and she fell down the remaining steps. Appellant sustained injuries to her neck and left ankle. Appellant was unable to work from the time of her fall until the end of October, 2003, resulting in lost wages. She also incurred medical expenses. At the time of her fall, Appellant had worked in the building for two years, and had utilized the stairs up to twice a day for the duration of her employment.

Appellant filed suit on May 7, 2004, seeking damages for personal injury. The trial took place on April 13, 2006. The trial court's Order, issued on April 17, 2006, appears in its entirety as follows:

> This case is before the Court on the 13th day of April, 2006, upon the original and amended Complaints of Plaintiffs, the Response and Amended Response of Defendants, Wayne Medical Center and Maury Regional Hospital, the testimony of witnesses in open court, statements and arguments of counsel, and the record; from all of which the Court finds that Plaintiffs have not carried their burden of proof and that this case should be dismissed. The Court makes the following
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> **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
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> 1. Plaintiff, Judy Jones, (Mrs. Jones) claims injuries resulting from a fall on August 7, 2003, as she was descending the wooden stairs leading from the back door of her employer's office to the parking lot. It is Mrs. Jones' position that the stairs and deck area were not properly maintained and were in poor condition on the date of injury. Further, that regular inspections were not conducted; there were no posted warnings of any danger, and the premises were allowed to deteriorate over a period of time, leading to a dangerous and defective condition.
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> 2. It is undisputed that the back stairs were primarily used by employees for ingress and egress. In addition to the wooden stairs, there are concrete stairs at the back of the building located some 20 feet from the wooden ones. The concrete stairs also lead to the back entrance of Mrs. Jones' office. There is a front entrance used primarily by patients. It is explained to the Court that if an employee enters from the front and happens to be the first employee arriving that day, that employee has to remain in the waiting room area until someone can buzz them to the next area. Otherwise, the front entrance is accessible for ingress and egress by patients and employees.
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> 3. For two years prior to her fall, Mrs. Jones had used the same wooden stairs on a daily basis, several times a day. It is undisputed that she considered the stairs to be unsafe and that she discussed the unsafe condition of the stairs with various people, including her husband and co-workers. Nevertheless, Mrs. Jones continued to use the stairs and she never reported any problems to Wayne Medical Center. She testified that she used the back stairs primarily because of convenience to her office.
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> 4. It is also undisputed that some six (6) months prior to Mrs. Jones' fall, the stairs and decking were inspected and new screws were added to a portion of the

deck. William Hicks, Director of Maintenance for Wayne Medical Center, testified that at that time the steps were in good condition. There were multiple nails in each plank and there was nothing unsafe about them. No complaints were received by maintenance in regard to the steps. Mr. Hicks testified that there was no way to predict that a portion of a step would "raise up" and cause someone to fall. The Court finds Mr. Hicks to be a very credible witness.

5. The Court finds that the wooden stairs were not in a dangerous or defective condition on the date of Mrs. Jones' fall. Therefore, Defendants had no duty to warn Mrs. Jones about the stairs.

6. Further, the Court finds that reasonable minds cannot differ in finding that Mrs. Jones' fault is equal to or greater than that of Defendants. Mrs. Jones is at least 50% at fault for her injuries by failing to exercise reasonable care for her own safety.

SO ORDERED.

On appeal, Appellant asserts that (1) Appellee had actual and constructive notice of a dangerous condition on its premises, and (2) Appellant's knowledge of the risks involved with the use of the stairs does not bar her claim.

II. STANDARD OF REVIEW

Review of the trial court's ruling must conform with Tenn. R. App. P. 13(d), which states that "review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. . . ." Tenn. R. App. P. 13(d). As stated by this Court:

> The trial court's findings of fact are reviewed *de novo* with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). "Our search for the preponderance of the evidence is tempered by the principle that the trial court is in the best position to assess the credibility of the witnesses; accordingly, such credibility determinations are entitled to great weight on appeal." *Rice v. Rice*, 983 S.W.2d 680, 682 (Tenn.Ct.App.1999) (citing *Massengale v. Massengale*, 915 S.W.2d 818, 819 (Tenn.Ct.App.1995); *Bowman v. Bowman*, 836 S.W.2d 563, 567 (Tenn.Ct.App.1991)). Questions of law are not entitled to Tenn. R. App. P. 13(d)'s presumption of correctness on appeal. We will review the legal issues *de novo* and reach our own independent conclusions regarding them. *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001); *King v. Pope*, 91 S.W.3d 314, 318 (Tenn.2002).

Cantrell v. Cantrell, M2003-00551-COA-R3-CV, No.2005 WL 711966, at *2 (Tenn.Ct.App. Mar. 28, 2005).

III. ANALYSIS

A. Dangerous Condition

Appellant alleges that Appellee knew the staircase was in poor condition and in need of repair, and that lack of regular maintenance and failure to adequately inspect the steps eventually caused Appellant's fall. In countering Appellant's argument, Appellee asserts that the stairs were not in a dangerous condition, as they were utilized daily by physicians, employees, and visitors, all without incident. Further, Appellee argues that maintenance performed on the stairs six months prior to Appellant's fall further serves to reinforce the fact that the stairs had been repaired recently. Lastly, Appellee maintains that nobody, let alone Appellant, had ever complained about the safety of the stairs. The trial court found that the staircase was not in a dangerous or defective condition, and therefore Appellee had no duty to warn Appellant about the stairs.

William Hicks ("Hicks"), Appellee's Director of Maintenance, provided extensive testimony at trial. He testified that he was familiar with the staircase in question, and that it was about twelve years old at the time of trial. Hicks further testified that he performed maintenance on the staircase approximately six months preceding Appellant's fall, stating that "Dr. Herrera had called us for a loose board at his back door and we went over and screwed his down and we just went over them all and checked them all while we was there." Hicks testified that other than the one instance, he never received any complaints about the stairs, either specifically or generally. Following Appellant's fall, Hicks inspected the stairs and noted that "[o]ne of the boards was turned up on its edge." At that point in time, Hicks screwed down all of the steps. Regarding regular inspections of the staircase, Hicks testified as follows:

> Q. Do you or those working under you make regular inspections of the deck and stairs behind the Medical Office Building?
> A. No, because we are over there most of the time, mostly every day doing something at one of the buildings, one of us.
> Q. Is what you are saying that because you are over there anyway, going up and down the stairs or walking on the deck, you don't actually have to go over there once a week or once a month and make some kind of formal inspection?
> A. No, not unless we are called.

Hicks further testified that in his opinion the deck and staircase had weathered quite a bit over the past twelve years, as is typical for an outdoor wooden staircase of this kind, but that they were in good condition immediately prior to Appellant's fall. Hicks' testimony concluded as follows:

> Q. Finally, is there any doubt in your mind that on August the 7th, 2003, as far as you knew, there was nothing unsafe about these stairs?
> A. No, not at that time.

This Court has stated the following regarding premises liability:

In *Tampas v. Target Stores*, 1994 Tenn. App. LEXIS 420, an unreported opinion by this court by Judge Goddard, filed August 2, 1994, the court expressed the law applicable here, tersely and succinctly:

> Before an owner or operator of premises can be held liable for negligence in allowing a dangerous or defective condition to exist on its premises, it must have (1) been created by the owner or operator or his agent, (2) if the condition was created by someone other than the owner or operator or his agent, there must be actual or constructive notice on the part of the owner or operator that the condition existed prior to the accident. *Gargaro v. Kroger Grocery & Baking Co.*, 22 Tenn. App. 70, 118 S.W.2d 561 (1938).
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> If liability is to be predicated on constructive knowledge by the Defendant, the proof must show the dangerous or defective condition existed for such length of time that the Defendant knew, or in the exercise of ordinary care should have known, of its existence. *Allison v. Blount National Bank*, 54 Tenn. App. 359, 390 S.W.2d 716 (1965).

Ogle v. Winn-Dixie Greenville, 919 S.W.2d 45, 47 (Tenn.Ct.App.1995). However, the Supreme Court of Tennessee provided the following caveat:

> The duty imposed on the premises owner or occupier, however, does not include the responsibility to remove or warn against "conditions from which no unreasonable risk was to be anticipated, or from those which the occupier neither knew about nor could have discovered with reasonable care." *Prosser and Keeton on Torts*, *supra*, § 61 at 426. In this regard, "the mere existence of a defect or danger is generally insufficient to establish liability, unless it is shown to be of such a character or of such duration that the jury may reasonably conclude that due care would have discovered it." Id. at 426-27. . . .

Rice v. Sabir, 979 S.W.2d 305, 309 (Tenn.1998).

According to this Court:

> In summary, property owners and landlords are not insurers of the safety of the common elements under their control. *Tedder v. Raskin*, 728 S.W.2d at 348. While they have a duty to keep these areas in good repair and safe condition, *Woods v. Forest Hill Cemetery, Inc.*, 183 Tenn. 413, 424, 192 S.W.2d 987, 991 (1946); *Grizzell v. Foxx*, 48 Tenn. App. 462, 467-68, 348 S.W.2d 815, 817 (1960); *Jones v. Metro Elevator Co.*, 2001 Tenn. App. LEXIS 962, No. W2000-02002-COA-R3-CV, 2001 WL 1683782, at *4 (Tenn.Ct.App. Dec. 31, 2001) (No Tenn. R. App. P. 11 application filed), they are not required to constantly inspect and repair the property. *Glassman v. Martin*, 196 Tenn. 595, 597, 269 S.W.2d 908, 909 (1954); *Tedder v.*

> *Raskin*, 728 S.W.2d at 348. Rather, property owners and landlords, like tenants, have a duty to exercise ordinary care with regard to the condition of the common areas under their control. *Tedder v. Raskin*, 728 S.W.2d at 347-48.

Denton v. Hahn, M2003-00342-COA-R3-CV, 2004 WL 2083711, at *6 (Tenn.Ct.App. Sep. 16, 2004).

No proof exists to support Appellant's argument that Appellee knew the staircase was in poor condition and/or in need of repair. In fact, Hicks testified that he or a member of his staff utilized the staircase daily, and had no indication that such staircase might be dangerous. Further, no complaints had been made to the maintenance staff, and the staircase had been maintenanced and repaired six months prior to the accident. Appellant's fall was an isolated incident of which Appellee had no warning. Appellee had neither actual nor constructive notice of the condition, and there is no indication that due care would have discovered such condition.

Appellee's reliance on *Duckett v. Foxfire Apartments, et al.*, No. 02A01-9709-CV-00215, 1998 WL 34290150 (Tenn.Ct.App. April 27, 1998) is misplaced. The facts in *Duckett* can be distinguished by the following:

> The accident occurred when Duckett was preparing to walk down the rear stairwell. The stairwell is composed of concrete and steel and the railings are composed of steel. Duckett testified that the stairs were icy at the time of the accident and, thus, she supported herself by holding the railings. According to Duckett, immediately after she grasped the railings, the railings gave way, causing her to lose her balance. Duckett's feet slipped out from under her and she fell down the entire length of the stairs.
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> Duckett and Lewis both testified that before the accident, they had notified the defendants that the railings were rusted and loose. Defendants allegedly did not attempt to repair the railings.

Duckett, 1998 WL 34290150, at *1-2.

B. Attributable Fault

Appellant asserts a very narrow argument regarding fault, arguing that while she had concerns about the general overall condition of the stairs, she was unaware that the fourth step would fail. Appellee argues that Appellant's knowledge of the condition of the stairs was superior to that of Appellee, and because Appellant knew of the condition of the stairs, Appellee had no duty to warn her. Appellee further argues that because Appellant had extensive knowledge of the condition of the stairs, and continued to use such stairs instead of other available alternatives, Appellant was at least fifty percent at fault for her injuries and damages. The trial court found that Appellant's fault

was equal to or greater than Appellee's fault, and that Appellant was responsible for her injuries for failing to use reasonable care.

At trial, Appellant offered testimony regarding her perception of the safety and condition of the staircase:

> Q. You had some concerns about the safety and stability of the stairs that we are discussing today well before you fell on them on August 7, 2003?
> A. I had some concerns about their safety.
> Q. All right. And in spite of these concerns, every day that you went to work at the Medical Office Building at Wayne Medical Center, you parked behind the Medical Office Building and you used these stairs several times a day during the weekday; isn't that true?
> A. Yes, sir.
> Q. And you did this in spite of your own concerns about their safety?
> A. Yes, sir.
> Q. And beyond that, your husband had told you before you fell on these stairs that he thought the stairs weren't safe; is that true?
> A. He had concern about their safety.
> Q. And you continued to use them voluntarily in part for the convenience of getting in and out of your workplace, correct?
> A. Yes, as did the rest of the employees.
> Q. And that included the doctors that worked in this building, their employees, they all used these stairs on a daily basis, correct?
> A. Yes, sir.

Appellant's husband, Steve Jones, also testified about the staircase:

> Q. Mr. Jones, isn't it fair to say that you had some concerns about these stairs even before your wife fell on them on August 7, 2003?
> A. Yes, sir.
> Q. And you had in fact even expressed those concerns to your wife?
> A. Yes, sir.
> Q. You also used those stairs yourself from time to time?
> A. Yes, sir.
> Q. And you understood, didn't you, Mr. Jones, that whenever you or your wife chose to use these stairs, in your opinion, you were doing so at your own risk, weren't you?
> A. Yes, sir.

Although both Steve and Judy Jones testified to having concerns about the safety of the stairs, Appellant continued using such stairs, never reporting any of her concerns to Appellee. Further, Hicks testified to another set of stairs that were both convenient and available for use:

Q. . . . [I]sn't it true that as we look at exhibit 4, to the left of what's depicted in this, there is actually another set of stairs?
A. It's a concrete steps.
A. And they are concrete steps?
A. Right.
Q. And those concrete steps go up on top of this very same deck that we are looking at?
A. Right.
Q. And with concrete steps, you don't have to worry about nails and things like that, do you?
A. That's correct.
Q. And so as we are looking at exhibit 3, which goes up to the top of these stairs, somebody could walk up, I don't know, what is that, 20, 30 feet around to the corner of the building?
A. About 20 foot.
Q. And get right up on these concrete steps, right?
A. Right.
Q. And get up to the same doors that the wood steps lead to, right?
A. That's correct.

In addressing the comparative fault of injured parties, the Supreme Court of Tennessee set forth the following standard (addressed in the context of summary judgment):

> In negligence cases, only after the element of duty is established does the comparative fault of the plaintiff come into play. *See Coln v. City of Savannah*, 966 S.W.2d at 42. If the defendant has plead the affirmative defense of the plaintiff's relative fault, the reasonableness of the plaintiff's conduct in confronting a risk should be determined under the principles of comparative fault. *See Perez v. McConkey*, 872 S.W.2d 897, 905 (Tenn. 1994). If the evidence is evaluated in the light most favorable to the plaintiff and reasonable minds could not differ that her fault was equal to or great than that of the defendants, summary judgment in the defendant's favor may be granted. *See Coln v. City of Savannah*, 966 S.W.2d at 44.

Staples v. CBL & Assocs., 15 S.W.3d 83, 92-3 (Tenn.2000). Further, this Court has stated that "tenants who have equal or superior knowledge of a dangerous condition should not recover from the owners of the premises for injuries caused by the dangerous condition." *Denton*, 2004 WL 2083711, at *13.

As further noted by this Court:

> Possessors of land are not insurers of the safety of those who enter upon their land. "The proprietor will not be held liable if the dangerous or defective condition

> is obvious, reasonably apparent, or as well known to the invitee as to the owner." . . .
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> *It is unnecessary to cite authority for the proposition that mere ownership or occupancy of premises . . . does not render one liable for injuries to persons entering them; the owner is not an insurer, even when the visitor is an invitee.* Liability is grounded on the superior knowledge of the owner of the danger to the invitee. It is when the perilous condition is known to the owner and not known to the person injured that a recovery is permitted.
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> . . . .
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> . . . [A] plaintiff cannot recover for injuries which are caused by a dangerous condition of which the plaintiff is aware. . . . "Even if the defendant created the dangerous condition or had constructive notice of the hazard proximately causing plaintiff's injury, if the plaintiff had equal or superior knowledge of the condition which caused the fall, the defendant would not be liable for injuries sustained by the [plaintiff]."
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> . . . [R]egardless of the condition, if the plaintiff has equal or superior knowledge of the condition as compared to the defendant, the plaintiff will not be allowed to recover.

Roberts v. Roberts, 845 S.W.2d 225, 227-28 (Tenn.Ct.App.1992) (citations omitted). In this case, Appellant obviously had equal, if not superior, knowledge of the condition of the staircase.

Unless Appellant can prove that something was specifically wrong with the staircase, causing her fall, the argument of a general feeling of uneasiness with the staircase is simply too speculative. Further, Appellant had two alternatives: a stone staircase roughly twenty feet from the wooden one, and the front entrance of the building. While Appellant asserted at trial that the front entrance was not a feasible possibility when one was the first to arrive in the morning, Appellant's fall occurred in the afternoon when she was leaving the building. Therefore, at that time, the front entrance was available to Appellant. The trial court's ruling that Appellant's fault was greater than or equal to that of Appellee is affirmed.

IV. CONCLUSION

The judgment of the trial court is affirmed. Costs of the cause are assessed to Appellant.

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WILLIAM B. CAIN, JUDGE